

News 509



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Contract Services Company, Inc.

File: B-228931

Date: December 29, 1987

DIGEST

Cost comparison showing cost of the low commercial offer exceeded the government's estimated cost of in-house performance is invalid, and protest on that basis is sustained, where the solicitation's statement of work included work that the government excluded from its estimate and that was more costly than the difference between the government estimate and the low bid.

DECISION

Contract Services Company, Inc. (CSC), protests the rejection of its bid under invitation for bids (IFB) No. N62467-87-B-2736, issued by the Naval Facilities Engineering Command's Southern Division at the Naval Air Station, Key West, Florida. The IFB was issued under step two of a two-step sealed bid procurement for a broad range of maintenance services at the Station. The IFB solicited offers for the express purpose of comparing the cost of performing the services in-house with the cost of awarding a commercial contract for a base year plus 2 option years. The cost comparison indicated that the costs associated with CSC's low commercial bid exceeded the Navy's estimate of its in-house costs; the Navy thus determined to retain the function in-house. CSC appealed the results of the cost comparison to a Navy appeals board which, after making a few relatively minor adjustments, determined that the 3-year cost of CSC's bid properly should be \$16,152,414, while the cost of in-house performance should be \$15,465,140; the appeals board thus affirmed the decision that retaining the services in-house would be less costly (by \$687,274). The protester alleges three errors in the cost comparison which, if corrected, would change the outcome. We sustain the protest.

Initially, we note that while the Navy has provided backup materials, it has not submitted a substantive report addressing the issues raised by CSC. Rather, the Navy asserts that our Office lacks jurisdiction to consider

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protests concerning cost comparisons. The Navy (specifically, the Naval Facilities Engineering Command) has raised these same arguments previously; we have considered the arguments at length and rejected them in our prior decisions. See, e.g., Dyneteria, Inc., B-222581.3, Jan. 8, 1987, 87-1 CPD ¶ 30. As we indicated in those cases, we recognize that the underlying determination involved in cost comparisons--whether work should be performed in-house by government personnel or performed by a contractor--is one which is a matter of executive branch policy and not within our protest function. However, where a contracting agency utilizes the procurement system to aid in its determination of whether to contract out, we consider a protest from an offeror alleging that its proposal has been rejected because the agency failed to follow advertised procedures. Id.

One of the cost comparison errors alleged by CSC, and the most significant error in terms of cost impact, is the Navy's failure to include in its in-house estimate the cost of maintaining air conditioning and ventilation equipment in the air station's housing units. In this regard, the specifications stated that a successful bidder would be required to provide everything necessary to maintain facilities at the air station "complex and as generally described in [attachment] J-C1," which included housing unit maintenance. Annex 11 of the specifications, entitled "Maintenance, Repair, and Operation of Air Conditioning, Ventilation, and Refrigeration," further stated that the contractor shall be responsible for the maintenance of "all air conditioning, ventilation, ice making, cold storage and refrigeration systems located on the . . . complex." CSC's proposal under step one offered to perform housing air conditioning services, and CSC avers that it factored more than \$900,000 into its bid based on its interpreting the solicitation to encompass the work. The record shows this maintenance currently was being performed for the Navy by a contractor at a cost exceeding \$300,000 per year, or more than \$900,000 for 3 years.

The board rejected this aspect of CSC's appeal on the basis that the Navy never intended to include maintenance services for family housing air conditioning because those services were covered by a separate contract. The board conceded, however, that "the requirement for air conditioning service is stated so broadly in the solicitation it could easily be misinterpreted." The board nevertheless believed that other aspects of the solicitation should have been sufficient to indicate to CSC that the scope of work in fact did not include maintenance of the family housing air conditioners. Specifically, the board noted that the air conditioners were not included in the solicitation attachment listing major systems requiring preventive maintenance, and were not

reflected in the attachment showing historical data for housing maintenance work included in the solicitation.

We disagree with the board's conclusion on this issue. The plain language of the IFB expressly calls for this work, and, unlike the board, which noted that its role "is to rule on the basis of the economic merits of the appeal items, not to critique contract phraseology," we are not persuaded that CSC should have known from the rest of the IFB that this plain language should have been disregarded. First, the fact that the air conditioners were not included in the listing of "major systems" could have indicated, merely, that the Navy did not consider the family housing air conditioners to be major systems; the list seems to include only relatively large systems (i.e., equipment ranging from 3 to 100 tons), and the board decision seems to indicate that the housing air conditioners are smaller in scale (i.e., since tenants will be responsible for changing their own air filters).

Second, the IFB section setting forth historical workload data for housing maintenance was not broken down by specific types of work so as to exclude air conditioning maintenance but, rather, stated that "this matrix includes all trades that perform work in family housing." The fact that CSC's resulting estimated workhours may have exceeded the historical workload due to the inclusion of air conditioning maintenance was not necessarily an indication to the firm that this maintenance was not meant to be included; the firm reasonably could have concluded that, because the air conditioning maintenance previously had been performed by contract rather than in-house, the historical data did not include the air conditioning maintenance.

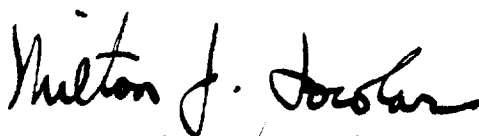
Given the clear language of the IFB requiring the air conditioning maintenance work, therefore, we do not believe it was unreasonable for CSC to interpret the IFB as requiring this work.

It is a fundamental principle of federal procurement that, for cost comparison purposes, commercial offers and the government's estimate of in-house costs must be based on the same statement of work. Alliance Properties, Inc., B-217544, Oct. 16, 1985, 85-2 CPD ¶ 413, aff'd, Department of the Navy--Request for Reconsideration, B-220991.2, Dec. 30, 1985, 85-2 CPD ¶ 728. Based on the record here, we conclude that CSC included in its bid work which the Navy excluded from its cost estimate. As the price of the Navy's current contract for the work was more than the \$687,274 in-house cost advantage, and CSC claims it factored more than \$900,000 into its bid for this work, it appears the Navy's cost comparison was faulty and that under the terms

of the IFB contracting with CSC should have been seen as the less costly alternative.

By letter of today to the Secretary of the Navy, therefore, we are recommending that the Navy revise its cost comparison and award CSC a contract based on a reduction of its bid by the amount attributed to providing maintenance for family housing air conditioning. See Alliance Properties, Inc., B-217544, supra. If a contract is not awarded, CSC is entitled to be reimbursed its proposal preparation costs as well as its costs of pursuing the protest. See Dyneteria, Inc., B-221089, Mar. 31, 1986, 86-1 CPD ¶ 302.

The protest is sustained.

for 
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of the United States